

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C BLU,

Plaintiff,

v.

CLALLAM COUNTY et al.,

Defendants.

CASE NO. 3:23-cv-06022-DGE

ORDER ON MOTION TO DISMISS
FOR LACK OF SERVICE (DKT.
NO. 11)

Presently before the Court is Defendants' motion to dismiss Plaintiff's complaint for lack of service. (Dkt. No. 11.) On November 7, 2023, Plaintiff filed a motion for leave to proceed in forma pauperis ("IFP") and a proposed complaint. (Dkt. No. 1.) On December 21, 2023, the Court granted Plaintiff's motion to proceed IFP (Dkt. No. 5), and Plaintiff filed a complaint the same day. (Dkt. No. 6.)

Plaintiff's claim stems from his treatment in detention at the Clallam County Jail between November 1, 2020 and November 7, 2020. (*Id.*) Plaintiff filed suit against Clallam County and several County jail employees in their individual and official capacities. Plaintiff asserted

1 several causes of action under 42 U.S.C. §1983, including: 1) Religious Discrimination;
2 Prohibiting Free Exercise of Religion, 2) Infliction of Cruel and Unusual Punishment, and 3)
3 Due Process, Right of Access, Equal Protections. (*Id.* at 7–9.)

4 On March 22, 2024, Defendants filed the instant motion to dismiss Plaintiff’s complaint
5 for lack of service. (Dkt. No. 11.) Defendants contend Plaintiff’s complaint should be dismissed
6 without prejudice because Plaintiff failed to serve the summons and complaint on any and all
7 Defendants within 90 days of filing the complaint. (*Id.*)

8 Pursuant to Federal Rule of Civil Procedure 12(b)(5), a defendant may move to dismiss
9 an action for insufficient service of process. Rule 4(m) provides that “[i]f a defendant is not
10 served within 90 days after the complaint is filed, the court—on motion or on its own after notice
11 to the plaintiff—must dismiss the action without prejudice against that defendant or order that
12 service be made within a specified time.” However, “if the plaintiff shows good cause for the
13 failure, the court must extend the time for service for an appropriate period.” *Id.*

14 The Court acknowledges that Plaintiff is proceeding pro se and that he is presently
15 incarcerated. However, Plaintiff’s pro se status does not relieve him of the responsibility to
16 effect service on Defendants. Fed. R. Civ. P. 4(c)(1) (“The plaintiff is responsible for having the
17 summons and complaint served within the time allowed by Rule 4(m) and must furnish the
18 necessary copies to the person who makes service.”). Nor does Plaintiff’s pro se status, in itself,
19 constitute good cause for failure to effect timely service. *Larson v. Commonsprit Health*, Case
20 No. 2:23-cv-00747-TLN-JDP (PS), 2024 WL 150138 at *1 (E.D. Cal. Jan. 12, 2024).

1 More than 90 days have passed since Plaintiff filed his complaint. Plaintiff has not
2 served Defendants or taken any other steps to move this case forward.¹ Further, under the local
3 rules, Plaintiff's failure to respond to Defendants' motion may be considered by the Court as an
4 admission that the motion has merit. Local Civil Rule 7(b)(2).

5 Nevertheless, federal courts have "broad discretion" to extend the time for service under
6 Rule 4(m), even absent a showing of good cause, and have leeway "to preserve meritorious
7 lawsuits despite untimely service of process." *United States v. 2,164 Watches, More or Less,*
8 *Bearing a Registered Trademark of Guess?, Inc.*, 366 F.3d 767, 772 (9th Cir. 2004). "In making
9 extension decisions under Rule 4(m) a district court may consider factors such as a statute of
10 limitations bar, prejudice to the defendant, actual notice of a lawsuit, and eventual service."
11 *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007) (quotation marks omitted).

12 Here, Defendants had actual notice of the lawsuit, and there is little evident risk of
13 prejudice to Defendants if the Court extends the deadline for service. Furthermore, Plaintiff
14 appears to have initiated his lawsuit exactly three years after the conclusion of the events giving
15 rise to his complaint, which raises questions regarding the statute of limitations. *See A.T. v.*
16 *Everett Sch. Dist.*, 300 F. Supp. 3d 1243, 1252 (W.D. Wash. 2018) ("[I]n a Washington forum,
17 the statute of limitations for a section 1983 claim . . . is three years.").

18 Accordingly, the Court, in exercise of its discretion, finds it appropriate to extend the
19 deadline for service in this case. Defendants' motion (Dkt. No. 11) is DENIED. Plaintiff shall,

21 ¹ Plaintiff filed a response to Defendants' motion on May 20, 2024. (Dkt. No. 13.) Plaintiff
22 contends his ability to prosecute this case has been hindered by Defendants' actions during his
23 incarceration and states he did not receive a copy of Defendants' motion until the third week of
24 April. (*Id.* at 1.) Plaintiff argues he lacks the funds and knowledge to hire a process server. (*Id.*
at 3–4.) Plaintiff further asserts he did not receive a copy of the Court's order on his motion to
appoint counsel. (*Id.* at 2.) Plaintiff asks the Court to extend the deadline for service to July 31,
2024. (*Id.* at 4.)

1 no later than **July 31, 2024**, effect service on Defendants in compliance with the Federal Rules of
2 Civil Procedure. Failure to do so will result in the dismissal of Plaintiff's complaint without
3 prejudice.

4 Separately, the Clerk SHALL provide Plaintiff an additional copy of the Court's order on
5 his motion to appoint counsel to ensure Plaintiff received a copy. (Dkt. No. 12.)
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7 Dated this 24th day of May, 2024.

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David G. Estudillo
United States District Judge
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